



Body Camera Evidence

LINDSAY G. WATTS

PEARL RIVER COUNTY PUBLIC DEFENDER

Body Camera Evidence

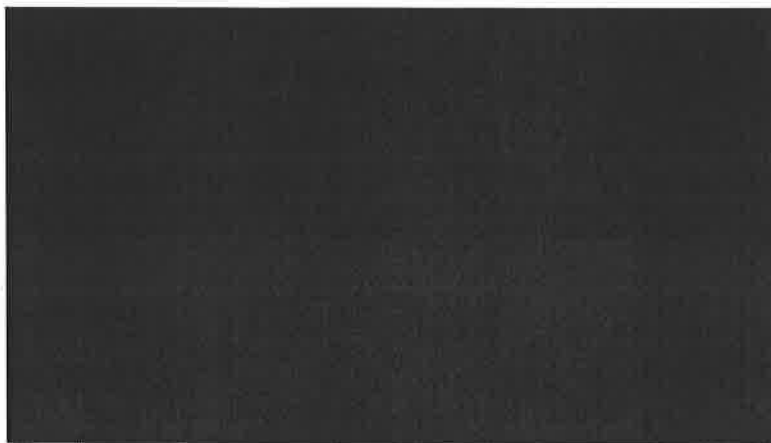
Evidentiary Considerations

- ▶ Chain of custody
- ▶ Technical controls to protect against tampering, destruction of evidence and unauthorized access
- ▶ Authentication issues
- ▶ Expert witnesses to explain camera function
- ▶ Retention of evidence
- ▶ Spoliation of evidence
- ▶ *Brady* and *Giglio* considerations

Historical Perspective

- ▶ Fatal officer involved shooting of Michael Brown, an unarmed black teenager, occurred in Ferguson, Missouri in 2014; no body-worn cameras (BWCs) were worn by responding agencies at the time.
- ▶ In 2015, the Justice Department awarded approximately \$23 million in funding for BWCs to build on President Obama's proposal to purchase 50,000 BWCs for law enforcement agencies within three (3) years.

Eyewitness testimony...



The Officer speaks...



President Obama after the Grand Jury chooses not to indict...







Awareness

► Reporters Committee For Freedom of the Press

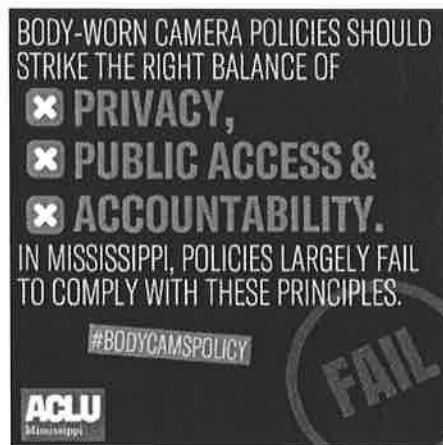
- Interactive, online map of the United States showing the current status of police department policies and state legislation concerning BWCs



Awareness

► ACLU of Mississippi

- 2017 Striking the Right Balance: An Analysis of Body-Worn Camera Policies in Mississippi
 - Sent FOIA Requests to 147 local agencies
 - Received 65 local policies; all are available online
 - Privacy Protection vs. evidentiary tool?
 - Will it be updated to catalog all revisions?
 - <https://www.aclu-ms.org/en/campaigns/striking-right-balance-analysis-body-worn-camera-policies-mississippi>



Awareness

► Bureau of Justice Assistance (BJA) Body Worn Camera Pilot Implementation Program

- Operated by the Bureau of Justice Assistance (BJA), part of the Department of Justice's (DOJ) Office of Justice Programs (OJP)
- Grant program began in 2015 with \$20 million
- OJP enhanced funding to the BWC Pilot Implementation Program by adding over \$2.5 million, bringing it closer to the \$23 million dollar mark
- Awarding grants every year since 2015

BWC Policy Implementation Program 2015 Awards Map



2015

BWC Policy and Implementation Program Awards Map



2016

State	Locality	Federal Award
MN	Shakopee	\$ 60,000
MN	Brooklyn Park	\$ 50,038
MO	Hazelwood	\$ 56,321
MS	Pearl River Community College	\$ 13,471
NC	Raleigh	\$ 600,000
NC	Greensboro	\$ 300,000

BWC Policy Implementation Program Award Map



2017

State	Locality	Federal Award
MI	East Lansing	\$ 76,500
MI	University of Michigan	\$ 52,500
MN	La Crescent	\$ 25,000
MN	New Ulm	\$ 30,000
MN	St. Anthony	\$ 123,000
MN	Bloomington	\$ 199,500
MO	Lincoln University	\$ 13,445
MO	Cape Girardeau	\$ 27,000
MO	Regional Justice Information Service	\$ 435,304
MS	Canton	\$ 25,000

BWC Policy and Implementation Program Sites



Awareness

FOIA Requests

Submit individual requests to your local agencies.

Sample FOIA requests online.

What to potentially ask for:

- Copies of all versions of BWC policies adopted by agency over a time period versus a copy of the specific BWC policy in effect at a particular time

- Names of all officers outfitted with personal BWCs

- List of all units outfitted with dash cameras

Preliminary Hearings

Use as a discovery tool!

What to potentially ask:

- Names of all responding officers

- Whether BWCs were worn by each

- At what point the BWC was activated/deactivated during an encounter

- Describe the efforts undertaken to preserve the BWC footage

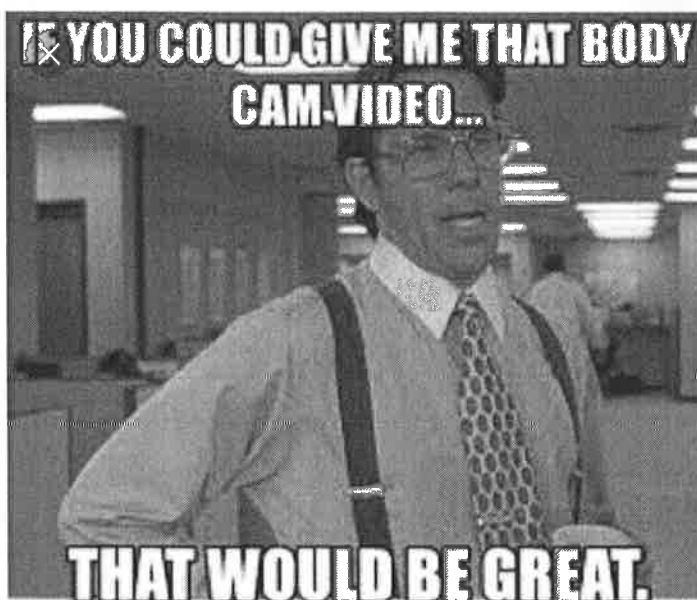
- Ask whether the officer has watched the BWC video

Discovery Requests

Brady and Giglio considerations

Aim to require prosecutors to respond in writing or verbally on the record to each request to put them "on the hook"

Ask for both department issued BWC footage as well as individually owned BWC footage



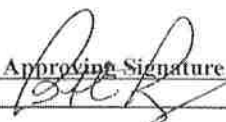
Analyzing the policy

Standard Operating Procedure

Effective Date
November 8, 2016

Revision Date
November 8, 2016

Approving Signature



Analyzing the policy

IV. PROCEDURE

A. Equipment

Department issued WVR's are intended for official Departmental use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.

1. Officers will use only those WVR's issued and approved by the Department. The wearing of personal video recorders may be authorized if no Departmental issued WVR is available.
2. WVR's will be assigned to all Full-Time Officers.
 - a. The issuance of each WVR will be documented and maintained by the Captain.
 - b. WVR's will not be rotated at shift change and will remain the responsibility of each assigned officer.
3. WVR's will be considered issued equipment until relinquished at the direction of the officer.

Analyzing the policy

B. Officer Responsibility

1. Prior to beginning a shift, officers assigned a WVR will ensure it's by conducting an operational inspection.
 - a. Any problems preventing the use of the unit during the shift will be reported to the immediate supervisor.
2. Officers will activate the unit to record during each citizen encounter related to a call for service, enforcement action, traffic stop, and/or police service to assist in the performance of their duties as necessary and at the discretion of the officer. Additionally, tactical activities such as building searches, searches for suspects, and building checks at alarms will be recorded to assist in the performance of their duties as necessary and at the discretion of the officer.
3. Officers will download video to the server upon indication that the device is nearing capacity and at the end of each shift. Flag or bookmark any video related to a criminal or traffic case, or that may be useful to the Department for training purposes.

Analyzing the policy

C. Supervisor Responsibility

1. It is incumbent on supervisors to ensure officers utilize WVR's according to policy guidelines.
2. Supervisors will conduct random weekly reviews of selected recordings in order to assess officer performance as well as flag videos that may be appropriate for training purposes.
3. If a complaint is associated with a recorded event, or an officer believes an incident may generate a complaint, the supervisor will flag the video for indefinite retention.

V. WEARABLE AUDIO/VIDEO RECORDING MEDIA MANGEMENT AND CONTROL

A. Officers using such WVR'S will download all stored media daily to a portable, external hard drive storage supplied in the squad room. This action should insure at least 90 days of archiving for unused data.

B. WVR digital data containing information that may be of value for case prosecution or in any criminal or civil adversarial proceeding shall be safeguarded as other forms of evidence. As such, this data will be subject to the same security restrictions and chain of evidence safeguards as any evidence. Such data will be "burned", from the external hard drive, to DVD, or CD, tagged and placed into evidence.

C. Officers maintaining this type of recording media will:

1. Transfer all data to the hard drive daily.
2. Will create an official copy to be logged and stored as evidence for any recording deemed of evidentiary value.
3. Will ensure that any events stored on the hard drive will be saved indefinitely for felony cases for a minimum of 90 days beyond final court disposition for misdemeanor cases.

Analyzing
the policy

Analyzing the policy

D. VIDEO PURGE

In compliance with the Poplarville Police Department Records Retention Schedule, video will be automatically purged from the server no later than twelve (12) months from the date of download. The only exception will be that video which has been flagged for indefinite retention.

Statewide Body –Worn Camera Policy Initiative

Senate

-2018 SB 2283

-2016 SB 2490

House

-2018 HB 675

-2017 HB 635

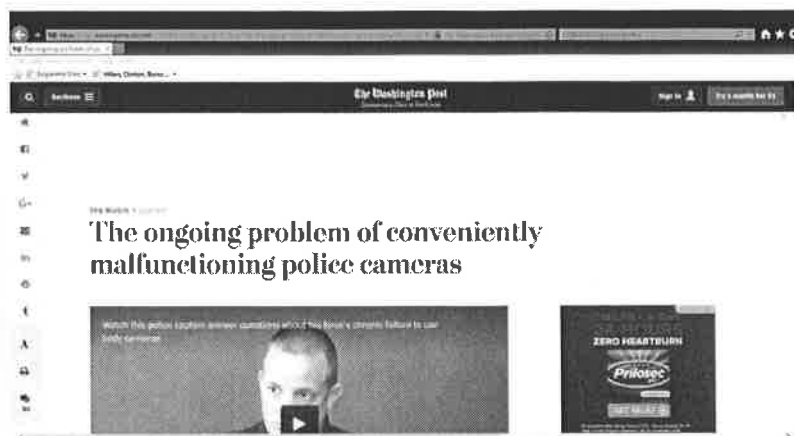
-2016 HB 669

-2015 HB 1279

BWC Manufacturers



Malfunctioning BWCs



Hackers and BWC Footage



Mitchell demonstrated security vulnerabilities in five different police body cameras—Viewu, Patrol Eyes, Fire Cam, Digital Ally and CeeSc—and showed how a hacker could manipulate or delete footage and associated metadata (such as the location, time, and date where the video was shot) as well as expose police officers to tracking and surveillance.

Mississippi Cases Addressing BWCs

▶ Mississippi Court of Appeals

- ▶ *Ferguson v. State*, 2018 Miss. App. LEXIS 451 (Miss. Ct. App. 2018).
 - ▶ Attala County – NOT on ACLU list
- ▶ *Billups v. State*, 2018 Miss. App. LEXIS 461 (Miss. Ct. App. 2018).
 - ▶ Columbus Police Dept.
- ▶ *Grady v. State*, 190 So. 3d 870 (Miss. Ct. App. 2015).
 - ▶ Lowndes County – NOT on ACLU list
 - ▶ Body camera video appeared to contradict officer's testimony, but validity of search not challenged
- ▶ *Badger v. State*, 2018 Miss. App. LEXIS 408 (Miss. Ct. App. 2018).
 - ▶ Gloster Police Dept. in Amite County – NOT on ACLU list
 - ▶ Body camera video revealed during trial, but no apparent motion for mistrial was made, instead knowledge was imputed to defendant due to formed questions concerning body cameras on cross examination

▶ Mississippi Supreme Court

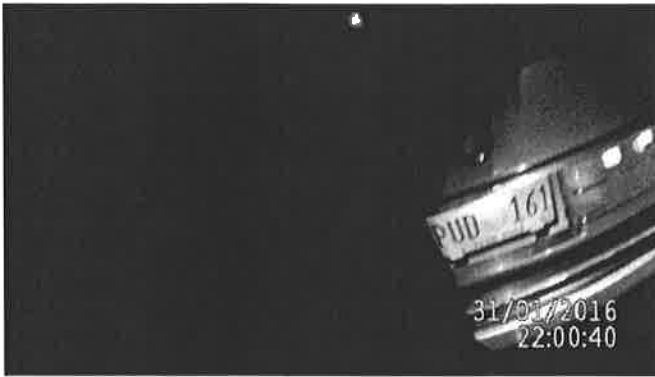
- ▶ *Harvey v. State*, 247 So. 3d 1258 (Miss. 2018).
 - ▶ Gulfport Police Dept. has body cameras and dash cameras
- ▶ *Hill v. State*, 2018 Miss. LEXIS 364 (Miss. 2018).
 - ▶ Starkville Police Dept. has body cameras

Double Edged Sword



Probable Cause



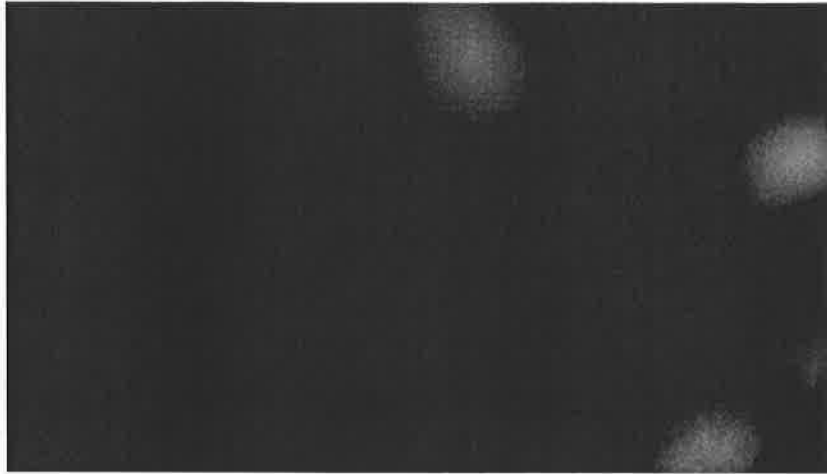


Money
Shot

Use of Force



Different Perspective



**CASE
DISMISSED**